

Docket No.: 30275/39376
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Howard Petty et al

Application No.: 10/777,423

Confirmation No.: 4331

Filed: February 12, 2004

Art Unit: 3737

For: METHOD OF EVALUATING METABOLISM
OF THE EYE

Examiner: Baisakhi Roy

COMMENTS ON STATEMENT OF REASONS FOR ALLOWANCE

MS Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicants have received the Examiner's statement of reasons for the indication of allowable subject matter with the Office Action mailed October 30, 2008. Reasons for allowance are only warranted in instances in which "the record of the prosecution as a whole does not make clear the Examiner's reasons for allowing a claim or claims." 37 C.F.R. 1.104(e). In the present case, Applicants believe the record as a whole makes clear the reasons for allowance and therefore no statement by the Examiner is necessary or warranted. Therefore, the record should reflect that Applicants do not necessarily agree with the statement in the reasons for allowance.

For example, the Examiner paraphrased in the Statement of Reasons for Allowance portions of Applicants' arguments submitted in the Response filed August 19, 2008, but the language of Response indicates that the paraphrased arguments are one such reason that the claims are allowable, and may not be the sole reason for the allowability of the claims. Moreover, the paraphrased arguments reflect reasons that independent claim 1 is allowable, and do not necessarily have direct correlation to other claims.

Applicants' claims should be limited only by the terms utilized therein. Thus, Applicants hereby submit these Comments in an effort to ensure that the claims are properly construed based only upon limitations that are actually present

therein and/or to ensure that the claims are not interpreted so as to include any additional claim limitations that are not found in the respective claims.

Further, each of the claims stands on its own merits and is patentable because of the combination it recites and not because of the presence or absence of any one particular element. Thus, it is respectfully submitted that each claim is allowable at least because the subject matter defined by its language is neither anticipated by, nor would have been obvious when taken as a whole in view of the art of record.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the undersigned. If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 13-2855 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees under order number 30275/39376.

Dated: January 29, 2009

Respectfully submitted,

By


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